

1988

# Fred J. Wilcock v. Joan Wilcock : Brief in Opposition to Certiorari

Utah Supreme Court

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Steven R. Bailey; Attorney for Respondent.

Joan Wilcock Dunkley; Pro Se.

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## Recommended Citation

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**880107** IN THE SUPREME COURT OF THE  
STATE OF UTAH

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FRED J. WILCOCK, :  
Plaintiff-Respondent :  
vs. : Case No. 880107  
JOAN WILCOCK, : PRIORITY NO. 13  
Defendant-Appellant. : CLASSIFICATION

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RESPONDENT'S BRIEF IN OPPOSITION  
TO APPELLANT'S PETITION FOR WRIT OF CERTIORARI

-----

Judgement from the Utah Court of  
Appeals, before the Honorable Billings,  
Davidson and Jackson

-----

STEVEN R. BAILEY  
2454 Washington Blvd  
Ogden, Utah 84401

Attorney for Respondent

Joan Wilcock Dunkley  
571 Cross Street  
Ogden, Utah 84404

Pro Se

IN THE SUPREME COURT OF THE  
STATE OF UTAH

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FRED J. WILCOCK,	:	
Plaintiff-Respondent	:	
vs.	:	Case No. 880107
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2454 Washington Blvd  
Ogden, Utah 84401

Attorney for Respondent

Joan Wilcock Dunkley  
571 Cross Street  
Ogden, Utah 84404

Pro Se

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### QUESTIONS PRESENTED FOR REVIEW

1. Whether the Utah Supreme Court has jurisdiction over this case.
2. Whether the trial court abused its discretion in concluding that Respondent's business had not increased in value, substantiating a finding that he should receive the business assets and correlating debts in the property settlement free and clear of any claim by Appellant.

### REFERENCE TO OPINIONS ISSUED BY THE COURT OF APPEALS

Court of Appeals Memorandum Decision  
- - - Filed November 3, 1987

Court of Appeals Decision denying Petition  
for Rehearing - - - Filed November 30, 1987

### JURISDICTION

There is no jurisdiction in this Court.

1. Date of entry of Petition for Writ of Certiorari filed March 3, 1988.
2. Order denying Petition for rehearing filed November 30, 1987.
3. Controlling statutory provisions. Rules 43 through 46, Rules of the Utah Supreme Court.

### CONTROLLING PROVISIONS

Rules 42 through 46, Rules of the Utah Supreme Court  
(See Appendix).

Title 30-3-5, Utah Code Annotated

- (1) When a Decree of Divorce is rendered, the Court may include in it, equitable orders relating to the property.

## STATEMENT OF THE CASE

### 1. Nature of the Case

This is an appeal by Defendant/Appellant from a Court of Appeals decision denying a rehearing. The Court of Appeals, in a November 1987 decision, affirmed the trial court's property distribution at a divorce proceeding and concluded that the trial court did not abuse its discretion in determining the value of certain business assets and related encumbrances.

### 2. Course of Proceedings

A Decree of Divorce was rendered January 28, 1987, by the Honorable David E. Roth, of the Second Judicial District Court of Weber County, State of Utah. It was ordered, "that Plaintiff be awarded his business and the machinery and equipment free and clear of any claim of the Defendant." This division of property was disputed by Defendant/Appellant.

The Court of Appeals, in Honorable Judith A. Billings' Memorandum Decision, found that there was an equitable property division, that no serious inequity resulted, and that the trial court did not abuse its discretion in determining such a property division.  
(CA Decision, p.2, November 3, 1987)

A Petition for rehearing was subsequently denied on November 25, 1987.

### 3. Statement of Relevant Facts

The parties were divorced pursuant to a Decree of Divorce entered on January 28, 1987. Said decree was granted pursuant to a trial on the matter and said decree provided, inter alia, that, plaintiff, during the course of the marriage, had acquired other items of equipment and machinery which, when considering the encumbrances listed by the plaintiff have not resulted in any increased value of that equipment although the plaintiff still retains his original \$5,000.00 equity value".  
(Para. 6, Conclusions of Law) The court stated in the Conclusions of Law, (para. 7) "[t]hat plaintiff should be awarded his business, machinery and equipment connected therewith free and clear of any claim of the [defendant]."

Appellant petitioned for a rehearing of the Court of Appeal's decision, and was denied a rehearing on November 25, 1987. Appellant, then, filed a Petition for Writ of Certiorari to the Supreme Court, and said Petition was filed on March 3, 1988. (Office of the Clerk, Supreme Court of Utah, dated March 3, 1988.)

## ARGUMENTS

### I

THIS COURT LACKS JURISDICTION OVER THIS CASE AS THE RULES OF THE UTAH SUPREME COURT GOVERNING A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT HAVE NOT BEEN FOLLOWED.

Rule 43 through 46 of the Rules of the Utah Supreme Court enumerate the procedures to be followed and factors to be considered for review of a Court of Appeals decision in the Supreme Court.

Rule 43 of the Rules of the Utah Supreme Court states that a petition for review of certiorari will be granted only when there are special and important reasons. While emphasizing that review is not a matter of right but of judicial discretion, the court indicates factors that will be considered upon a Petition for a Writ of Certiorari. These factors include:

1. When a panel of the Court of Appeals has rendered a decision in conflict with the decision of another panel of the Court of Appeals on the same issue of law;
2. When a panel of the Court of Appeals has decided a question of state or federal law in a way that is in conflict with the decision of this court;



3. When a panel of the Court of Appeals has rendered a decision that has so far departed from the accepted and usual course of judicial proceedings or has so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision; or
4. When the Court of Appeals has decided an important question of municipal, state, or federal law which has not been, but should be, settled by this court.

Nowhere in Appellant's brief does she indicate special and important reasons why the Supreme Court should review the decision of the Court of Appeals, or that the decision of the Court of Appeals has departed from the acceptable and usual course of judicial proceedings, or that it sanctioned such a departure by the lower court. Appellant fails to cite any Utah statutory or case law that would show in any way that the Court of Appeals or the trial court was wrong in its decision. Instead, she uses irrelevant arguments and asks whether Utah law permits such a division of marital and separate property. The answer is an unequivocal "yes".

The Court of Appeals based its decision in the instant case on the Supreme Court's decision in Burke v. Burke, 733 P.2d 133, 135 (Utah 1987). (Court of Appeals decision, Page 2). The Burke decision clearly outlines factors a trial court should consider in determining an equitable property division. The Court of Appeals, in this instant case, found that there was an equitable

property division, that no serious inequity resulted, and that the trial court did not abuse its discretion in determining such a property division.

Rules 44 and 45 of the Supreme Court provide for docketing fees and the time for petitioning. A Petition for Writ of Certiorari must be filed with the Clerk of this Court within thirty (30) days after the entry of the decision by the Court of Appeals, not from the date of the issuance of the remittitur in a petition for rehearing (Rule 45(c)). Also, the petitioner shall pay the Certiorari docketing fee within the time provided by Rule 45. (Rule 44 Rules of the Utah Supreme Court)

The Court of Appeals' decision in this case denying the petition for rehearing was dated on November 25, 1987, and filed on November 30, 1987. Appellant's Petition for Writ of Certiorari was filed on or about March 3, 1988, far beyond the time allowed for jurisdictional purposes. In addition, Appellant failed to pay a filing fee when she filed.

The Supreme Court has ruled that filing without paying a fee is not a filing. In Prowsewood Inc. v Mountain Fuel Supply Company, 676 P.2d 952 (Utah 1984) The Court states that "Leaving a paper with a filing officer, a fee for the filing of which is by statute required to be paid in advance, is not a filing." This case was dismissed

for lack of jurisdiction. The court held that filing a petition for appeal required two acts, the payment of fees and the delivery of the record to the clerk.

Filing a timely notice of appeal is an absolute jurisdictional pre-requisite to appealing a decision. In Anderson v. Anderson, 282 P.2d 845 (Utah 1955), the Defendant was committed to jail under a contempt order divorce proceeding. A petition to vacate the contempt order was denied. Defendant attempted to appeal; however, his petition was filed one month and one day after the district court's order. At this time, it must be noted that Appellant had "one month" rather than thirty days to appeal from a final order. A motion to dismiss the appeal on jurisdictional grounds was made. The Supreme Court dismissed the appeal, the Court stated:

It is thus clear that this appeal was not taken in time, that the failure to do so is jurisdictional and noticeable by the court sua sponte. The appeal is dismissed with costs to the respondent. (282 P.2d at 848.)

In estate of Mary Ratliff v. Conrad, 431 P.2d 571 (Utah 1967) Appellant lost a probate proceeding. Her motion for new trial was denied on March 1. On April 8, her notice of appeal was filed. The other party in the law suit moved to dismiss the appeal, and the Utah Supreme Court dismissed the appeal. The Court stated:

Since the notice was filed more than one month after the entry of judgement, or the order appealed from (Rule 73(a) Utah Rules of Civil Procedure), this court lacks jurisdiction to entertain the appeal and it is therefore compelled to order a dismissal thereof.

Appeal dismissed. Costs to respondents. (431 P.2d at 573, 574.) In the instant case, we are dealing with a slightly different rule. The Appellant had thirty (30) days to file a notice of appeal, instead of one month. Nevertheless, it is still clear that failure to file a notice of appeal within thirty (30) days precludes the Court from exercising jurisdiction over this appeal.

The fact that jurisdiction cannot be waived even if the parties were to consent to a waiver was stressed in the recent case of Thompson v. Jackson, 67 UAR 13 (Utah Court of Appeals, October 2, 1987). Reversing a circuit court's ruling which purported to deal with matters involving real property and money in excess of \$10,000.00, the Court stated: "[u]pon a determination by the Court that its jurisdiction is lacking, its authority extends no further than to dismiss the action." 67 UAR at 14.

The fact that Appellant has also failed to file her filing fees within the time required by Rule 44 of the Rules of the Utah Supreme Court is further justification for this Court to dismiss the appeal.

Rule 46(a) enumerates the contents required for a

Petition for a Writ of Certiorari. In Koulis v. Standard Oil Company of California, 746 P.2d 1182 (Utah 1987), the court states that all statements of facts in reference to the proceedings below shall be supported by citations to the record as required in Rule 24(a)(7). This case states that this Supreme Court rule is subject to the same interpretation and it is an identical rule. If a party fails to make a concise statement of fact and citation of the pages in the record where those facts are supported, the court will assume the correctness of the judgment below and may not and will not consider any facts not properly cited to or supported by the record. (746 P.2d at 1184).

The Advisory Committee's note to Rule 24 of the Rules of the Supreme Court, indicates the rules purpose: "Inadequate appellant briefs, which do not significantly assist the court in disposing of the case before it, have proved to be a significant problem. In order to alleviate this concern, this rule clearly specifies the required contents and order of each brief."

Appellant's petition is full of allegations not supported by the record. Her brief can fairly be described as being filled with burdensome, emotional, immaterial and inaccurate arguments indicating little, if any, legal support for her allegations. Therefore, the Court should disregard her brief on appeal and assume the

correctness of the judgments below and find that the trial court did not abuse its discretion.

## ARGUMENT

### II

THE DIVISION OF MARITAL PROPERTY AND PERFORCE OF MARITAL DEBTS IS A MATTER WITHIN THE SOUND DISCRETION OF THE TRIAL COURT, IS CLOAKED WITH PRESUMPTION OF VALIDITY, AND WILL NOT BE DISTURBED ABSENT A CLEAR ABUSE OF DISCRETION (CASE LAW FOLLOWING A PROPERTY DIVISION UNDER UTAH CODE 30-3-5(1)).

The trial court found in it's Findings of Fact that the dirt hauling business had accumulated items of equipment during the marriage, but that considering the encumbrances, the new equipment had not meant an increase in business asset value to Mr. Wilcock. That conclusion is based upon the exhibits presented to the court and the testimony of the parties and witnesses. Within certain limits that have been set by the Supreme Court, the trial court may make such orders in relation to the parties as may be equitable. The trial court in a divorce action is permitted considerable discretion in adjusting the financial and property interest of the parties.... Burnham v. Burnham, 716 P.2d 781 (Utah 1986).

The trial court need not make a distribution that is equal to the parties. Despite Ms. Dunkley's constant reference to a 50/50 relationship and characterizing the business as a "partnership", the trial court must take

into consideration a number of factors in distributing property after a divorce, including the amount and kind of property; whether the property was acquired before or during the marriage; the source of the property; the parties standard of living; respective financial condition; needs, and earning capacity; the duration of the marriage; what the parties gave up by the marriage; and the necessary relationship the property division has with the amount of alimony. Burke v. Burke, 733, 135 (Utah 1987).

The trial court held in it's Conclusions of Law and Decree of Divorce that Ms. Dunkley had not shown by the evidence that Mr. Wilcock had been benefitted \$9,500.00 by her contributions to the business. The factual findings indicated that the equipment had been encumbered and the ultimate value of the business was the same prior to as it was after the marriage. In reviewing a property division made by a trial court, the Supreme Court endows its decision with a presumption of validity and does not disturb the decree absent a clear abuse of discretion or manifest injustice or inequity. Stephens v. Stephens, 728 P.2d 991 (Utah 1986).

This case fails to support a clear abuse of discretion or inequity. Ms. Dunkley added her time and effort to the business, profited by those actions during the marriage, and left the marriage and the business in

about the same financial condition as they were when she entered. The trial judge did not burden her with the business debts and left the business in the hands of Mr. Wilcock with its value the same as when the marriage took place.

In order to successfully attack a trial court's Findings of Fact, an Appellant must marshall all the evidence in support of the trial court's findings and then demonstrate that even viewing it in the light most favorable to the court below, the evidence is insufficient to support the findings." Scharf v. BMG Corporation, 700 P.2d 1068 (Utah 1985).

The record and exhibits clearly show that the funds were commingled to such a degree that it was impossible to determine exactly what Ms. Dunkley spent for the business during the years. Ms. Dunkley received the benefits of the business during the marriage while she was contributing time and effort to make it profitable. The business showed a loss in 1983 and 1984 as demonstrated by the parties joint tax returns (Exhibits 15 & 16). The record shows that some of the business equipment purchased during the marriage was repaired, advertised for sale, and then sold or traded. Ms. Dunkley benefitted from these transactions directly.

Although business equipment was purchased and retained by Mr. Wilcock, the record clearly indicates that the



encumbrances on the business offset any value they may have. The incorporation by Mr. Wilcock did not disturb the ability of the court to clearly identify and value the equipment purchased during the marriage, or calculate the debt of the business.

Viewed most favorable to Mr. Wilcock, evidence presented at trial indicates that the value of the business at the time of divorce was nearly the same as it was when the marriage took place. Two appraisals were taken showing the accumulated equipment assets to be valued at approximately \$30,000.00. Against these assets are liabilities totaling \$24,289.21. The trial court added to the liabilities the \$5,000.00 value of the business before marriage and determined no increase had taken place. The evidence shown at trial was more than sufficient to support the findings of the trial court.

#### CONCLUSION

Because the Rules of the Supreme Court regarding review of an Appellate Court's decision have not been followed, this court lacks jurisdiction to consider this appeal. Furthermore, Appellant has not shown that the trial court abused its discretion in dividing the marital property. Respondents ask the court to dismiss the case and to award them attorney's fees and costs against

Appellant pursuant to Rule 33(a) of the Rules of the Utah  
Court of Appeals.

DATED this 26 day of April, 1988.

  
STEVEN R. BAILEY  
Attorney for Plaintiff/Respondent

  
Carolyn D. Zauthen  
Attorney for Plaintiff/Respondent

IN THE UTAH COURT OF APPEALS

-----oo0oo-----

Fred J. Wilcock,	)	
	)	
Plaintiff and Respondent,	)	MEMORANDUM DECISION
	)	(Not for publication)
v.	)	
	)	
Joan Wilcock Dunkley,	)	Case No. 870069-CA
	)	
Defendant and Appellant.	)	

Before Judges Billings, Davidson, and Jackson.

**FILED**

NOV 03 1987

BILLINGS, Judge:

Timothy M. Shea  
Clerk of the Court  
Utah Court of Appeals

Defendant appeals from the trial court's property distribution in this divorce action, requesting that she receive a share of the parties' sand and gravel hauling business assets. We affirm the district court.

The parties were married four years. Both had prior marriages. No children were born to the couple. Defendant, 53 at the time of trial, was the primary wage earner during the marriage. Plaintiff was 56 at the time of trial, and operated a business, owning equipment worth approximately \$5000 when he married defendant. During their marriage, the parties began to commingle their funds in hopes of building a profitable dirt hauling business. They subsequently purchased and traded various pieces of equipment, simultaneously encumbering many of the assets to finance each purchase. For the period 1982-1985, their business showed only one profitable year, incurring a loss in each of the other years. Both parties contributed to the operation of the business.

At trial, two separate appraisers, and plaintiff, valued the business equipment at approximately \$30,000. However, the equipment was encumbered by \$24,289.21 in liens. The testimony at trial supported, and the trial court found, that plaintiff

had \$5000 worth of equipment before the marriage. Based on the foregoing, the trial court found that the items of equipment and machinery acquired during the marriage had not appreciated in value. Furthermore, the business had little if any value as an ongoing concern. It had made a profit in only one of its four years of operation. Therefore, the business, machinery, and equipment were awarded to plaintiff, free and clear of any claim of defendant. The court awarded plaintiff the residence he had owned prior to the marriage, and ordered plaintiff to pay \$100 per month alimony to defendant for six (6) years. Defendant was awarded \$3,425, one-half of the sum defendant took from the parties' checking account, and judgment against the plaintiff in the sum of \$4000 for the savings she took into the marriage. In addition, defendant was awarded her automobile, free and clear of any interest of plaintiff.

#### I.

Defendant's sole contention of error is that the trial court abused its discretion in awarding the business and its assets to plaintiff, free and clear of any claim of defendant. Defendant claims that the trial court's valuation of the business assets was incorrect, resulting in an unjust enrichment of the plaintiff at her expense.

On review, we accord considerable deference to the trial court, and will not disturb the action of the court unless "there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; or the evidence clearly preponderated against the finding; or such a serious inequity has resulted as to manifest a clear abuse of discretion." Ruhsam v. Ruhsam, No. 860128-CA, slip op. at 2 (Ct. App. Sept. 11, 1987)(quoting Pope v. Pope, 589 P.2d 752, 753 (Utah 1978)).

In Burke v. Burke, 733 P.2d 133, 135 (Utah 1987), the Utah Supreme Court enumerated the factors a trial court should consider in "fashioning an equitable property division."

The factors generally to be considered are the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the health of the parties; the parties' standard of living, respective financial conditions, needs, and earning capacity; the duration of the marriage; the parties' ages at time of marriage and of divorce; what the

parties gave up by the marriage; and the necessary relationship the property division has with the amount of alimony and child support to be awarded.

Burke at 135.

Based upon the facts in the record, the trial court properly concluded that the business equipment assets had not appreciated during the marriage. The court fashioned a total award to put the parties in the position they were in when they entered this short term marriage. The evidence does not preponderate against the trial court's findings, nor has a serious inequity resulted. Accordingly, we affirm the Divorce Decree as entered. Each party shall bear his/her own costs on appeal.

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Judith M. Billings, Judge

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WE CONCUR:

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Richard C. Davidson, Judge

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Norman H. Jackson, Judge

FILED

NOV 30 1987

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Timothy M. Shea  
Clerk of the Court  
Utah Court of Appeals

Fred J. Wilcock,

Plaintiff and Respondent,

v.

Joan Wilcock,

Defendant and Appellant.

ORDER DENYING PETITION  
FOR REHEARING

Case No. 870069-CA

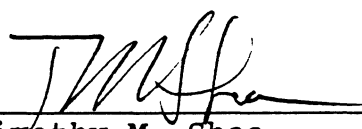
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THIS MATTER having come before the Court upon Appellant's  
Petition for Rehearing in the above captioned matter, and the Court  
having duly considered said petition,

IT IS HEREBY ORDERED that the Appellant's Petition for  
Rehearing be denied.

Dated this 25th day of November, 1987.

FOR THE COURT:

  
\_\_\_\_\_  
Timothy M. Shea  
Clerk of the Court

Brian R. Florence #1091  
of FLORENCE AND HUTCHISON  
Attorney for Defendant  
818-26th Street  
Ogden, UT 84401  
399-9291

IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

---

FRED J. WILCOCK,	:	
	:	FINDINGS OF FACT AND
Plaintiff,	:	<u>CONCLUSIONS OF LAW</u>
vs.	:	
JOAN DODGE WILCOCK,	:	Civil No. 94538
Defendant.	:	

---

The above-entitled matter came on for trial on the 19th day of November, 1986, before the Honorable David E. Roth, Judge of the above-entitled Court, sitting without a jury, plaintiff present and represented by counsel, George B. Handy, and defendant present and represented by counsel, Brian R. Florence, and the parties having been duly sworn and testified, and the Court having been fully advised in the premises, now files its:

FINDINGS OF FACT

1. That plaintiff and defendant are actual and bona-fide residents of Weber County, State of Utah, and have been for more than three months prior to the commencement of this action.

2. That plaintiff and defendant are husband and

FLORENCE  
and  
HUTCHISON

ATTORNEYS AT  
LAW

818-26TH STREET  
OGDEN, UTAH 84401

WILCOCK v. WILCOCK  
Civil No. 94538  
Findings of Fact and  
Conclusions of Law  
Page 2

wife, having been married to each other on  
January 22, 1982 in Ogden, Utah.

3. That no children have been born as issue of  
this marriage and none are expected.

4. That each of the parties had previously been  
married and had acquired property during said marriages.  
Plaintiff had certain real property upon which was situated  
a residence, together with \$5,000.00 worth of machinery and  
equipment. Defendant had \$4,000.00 in cash in a savings  
account and was receiving \$400.00 per month alimony. At  
the conclusion of this marriage, defendant has no cash and  
no alimony and as a result of the marriage, she is poorer.

5. That during the marriage, plaintiff had made  
approximately \$3,000.00 of improvements on the residence.  
That \$4,000.00 of defendant's funds had been used for  
family expenses. Defendant had acquired a 1982 Buick  
automobile.

6. That plaintiff, during the course of the  
marriage, had acquired other items of equipment and  
machinery which, when considering the encumbrances listed  
by the plaintiff, have not resulted in any increased value  
of that equipment although the plaintiff still retains his

ORENCE  
and  
ICHISON

ORNEYS AT  
LAW

36TH STREET



WILCOCK v. WILCOCK  
Civil No. 94538  
Findings of Fact and  
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original \$5,000.00 equity value.

7. That the dispute on the debt at America First Credit Union is no longer an issue in that it is paid and they are no longer holding the defendant responsible. Plaintiff has listed that debt on his schedule as an obligation to his mother and has claimed it as an off-set against the value of his property.

8. That defendant is employed at Hill Air Force Base and has accrued \$4,000.00 of retirement benefits during the marriage of the parties.

9. That at the present time, plaintiff is capable of making \$1,000.00 or \$1,200.00 per month. There is some cause for speculation that he might be able to make more based upon what the company earned in 1985 and based upon the fact that the bookkeeping of the company is pretty sloppy. Based upon the testimony of the parties and the plaintiff's partner, it is not realistic to expect that the plaintiff is going to average more than \$1,000.00 per month net.

From the foregoing Facts, the Court now makes and files its:

DRENCE  
and  
CHISON

RNEYS AT  
LAW

5TH STREET  
UTAH 84401

WILCOCK v. WILCOCK  
Civil No. 94538  
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CONCLUSIONS OF LAW

1. That each of the parties should be awarded a Decree of Divorce from the other and said Decree should become final immediately upon its being signed and filed with the Clerk of this Court.

2. That defendant should not be required to reimburse the plaintiff for the value of the clothing she took when she left the domicile of the parties.

3. That plaintiff should be awarded, free and clear of any claim of the defendant, the real property and the residence situated thereon, together with all improvements. As an off-set, defendant should be awarded all of her accrued retirement benefits at Hill Air Force Base.

4. That plaintiff should not be required to reimburse defendant the \$9,500.00 allegedly invested in plaintiff's business.

5. That defendant should be awarded one-half of the sum of \$6,850.00 or \$3,425.00 from the sum taken from the parties' checking account.

6. That defendant should be awarded alimony in the sum of \$100.00 per month for a period of six years based

ORENCE  
and  
TCHISON

ORNEYS AT  
LAW

26TH STREET  
N, UTAH 84401

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upon the finding that defendant is only capable of making  
\$1,000.00 to \$1,200.00 per month.

7. That plaintiff should be awarded his business,  
machinery and equipment connected therewith free and clear  
of any claim of the plaintiff.

8. That judgment should be awarded in favor of the  
defendant against the plaintiff in the sum of \$4,000.00 for  
the savings she took into the marriage.

9. That both parties should be required to pay  
their own attorney fees and costs incurred herein.

10. That defendant should be restored to her  
former surname of DUNKLEY.

11. That defendant should be awarded the 1982  
Buick automobile free and clear of any interest in the  
plaintiff.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1987.

BY THE COURT:

\_\_\_\_\_  
DAVID E. ROTH, Judge

APPROVED AS TO FORM:

\_\_\_\_\_  
GEORGE B. HANDY  
Attorney for Plaintiff

WILCOCK/N

ORENCE  
and  
FICHISON

ORNEYS AT  
LAW